

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re : Chapter 11
:
GULLIVER'S GATE, LLC, : Case No. 19-13392 (RG)
:
Debtor. :
----- X

**STIPULATION AND ORDER BETWEEN GULLIVER'S
GATE, LLC AND TIMES SQUARE ASSOCIATES, LLC REGARDING
RETENTION OF PROPERTY AT CURRENT PREMISES**

Gulliver's Gate, LLC, as a debtor and debtor-in-possession (the "Debtor"), and Times Square Associates LLC ("TSA") respectfully submit this proposed stipulation and order (the "Stipulation and Order").

RECITALS

WHEREAS, Debtor was a tenant under that certain non-residential real property lease; dated as of May 1, 2014 (as amended, the "Lease"), pursuant to which TSA leased to Debtor the premises (the "Premises"), comprised of approximately 50,000 usable square feet of commercial space in the heart of Times Square;

WHEREAS, Debtor was scheduled to be evicted from the Premises (as hereinafter defined) on October 25, 2019;

WHEREAS, on October 24, 2019 (the "Petition Date"), Debtor filed a petition seeking relief under Chapter 11 of the Bankruptcy Code;

WHEREAS, TSA and Debtor have been involved in litigation in the courts of the State of New York since 2018 and in this Court as set forth in greater detail in TSA's Amended Motion for Relief from Stay filed on December 3, 2019 [ECF No. 13] and TSA's Motion to Compel

Payment of Post-Petition Obligations Pursuant to Section 365(d)(3) of the Bankruptcy Code filed on December 17, 2019 [ECF No. 22];

WHEREAS, on or before January 28, 2020, Debtor announced on its website, among other places, that it was closing its business operations in the Premises as of January 22, 2020 and moving;

WHEREAS, Debtor has not paid TSA any rent since before the commencement of these cases;

WHEREAS, Debtor is preparing to vacate the Premises and turnover same to TSA; and

WHEREAS, TSA has advised Debtor, and Debtor acknowledges that any removal of property from the Premises from the Debtor's estate would result in a diminution of value to all creditors in violation of the Bankruptcy Code and accordingly, pending direction from the Court at the hearing on February 18, 2018, be preserved at the Premises.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED AND UPON APPROVAL BY THE BANKRUPTCY COURT OF THIS STIPULATION, THE FOLLOWING IS SO ORDERED:

1. The foregoing recitals are incorporated herein by reference as if set forth at length.
2. Debtor shall not remove any property of the Debtor's estate from the Premises until guidance is provided by the Court at the hearing to be held on February 18, 2020 or such other date as the Court may set.
3. Should Debtor remove any property from the Premises, TSA may move before this Court, upon five hours notice via email and text message to Debtor's counsel at Gabriel.delvirginia@verizon.net and 646-408-8216 for the immediate appointment of a trustee and/or other appropriate relief.

4. The Debtor shall not destroy, impair or in any other way cause the diminution in value of, any property of the Debtor's estate.
5. Any property of the Debtor's estate shall be retained and preserved wherever located.,
6. The Debtor shall preserve all of its books and records in its possession or in the possession of any third party, including its accountant, lawyers, bookkeepers or other third parties whether engaged as independent contractors or otherwise.
7. The Debtor shall preserve, maintain and shall not dispose of any of its data, computers, cloud based systems, accounts, goods, cables, connectors, electronic devices, bank accounts, intellectual property, licenses, software, computer hardware, all other goods, products and items necessary to conduct the business of the Debtor along with all books, records, manuals related to or used for the construction of, installation of, operation of, disassembly of or maintenance of any of the foregoing.
8. The Debtor shall preserve and maintain all property of Gulliver's Gate LLC, as a debtor, and of Gulliver's Gate LLC, as a debtor in possession, as such terms is defined under section 541 of the Bankruptcy Code.
9. Nothing contained herein shall constitute a waiver of any of TSA's rights, including, without limitation, its right to assert an administrative claim against the estate in respect of all rent that is due and owing since the commencement of this case.
10. Nothing contained in this Stipulation and Order is a waiver of any claim or defense of any party or shall in any way preclude any party from bringing or supporting any motion for the appointment of a trustee, to dismiss these cases, to compel abandonment of property, for relief from the automatic stay or for any other relief or remedy which may be available at law or equity.

11. This Stipulation and Order shall be binding on and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

12. The Bankruptcy Court shall have exclusive jurisdiction to resolve any and all disputes related this Stipulation and Order. Each of the parties hereto irrevocably consents for all purposes of this Stipulation and Order to the jurisdiction of the Bankruptcy Court and agrees that venue is proper in the Bankruptcy Court.

13. Nothing in this Stipulation and Order, whether express or implied, shall be construed to give to any person or entity other than the parties hereto any legal or equitable right, remedy, interest, or claim under or in respect of this Stipulation and Order.

14. This Stipulation and Order represents the mutual understandings by the parties hereto with respect to the matters addressed herein and supersedes all prior agreements whether in oral or written form.

15. This Stipulation and Order shall be effective and enforceable immediately upon entry.

IN WITNESS WHEREOF, and in agreement herewith, the Parties have executed and delivered this Stipulation and Order as of the date first set forth below.

Dated: January 31, 2020
New York, New York

s/ Gabriel Del Virginia
Gabriel Del Virginia, Esq.
Law Offices of Gabriel Del Virginia
30 Wall Street, 12th Floor
New York, New York 10005
Telephone: 212-371-5478
Facsimile: 212-371-0460
Gabriel.delvirginia@verizon.net

Counsel to Debtor

s/ Jack J. Rose
Jack J. Rose, Esq.
Howard W. Kingsley, Esq.
Rosenberg & Estis, P.C.
733 Third Avenue
New York, New York 10017
Telephone: (212) 687-7000
Facsimile: (212) 551-8484
jrose@rosenbergestis.com

Counsel to Times Square

Upon the proposed Stipulation and Order recited above, it is hereby:

ORDERED, that the Stipulation and Order is approved with the following change to the second Ordered paragraph, “Debtor shall not remove any property from the Premises until guidance is provided by the Court at the hearing to be held on February 18, 2020 or such other date as the Court may set;” and it is further

ORDRERED, that the Stipulation and Order is approved with the following change to the fifth Ordered paragraph, "Any of the Debtor's property shall be retained and preserved wherever located."

Dated: New York, New York
January 31, 2020

s/ Robert E. Grossman
Honorable Robert E. Grossman
United States Bankruptcy Judge